

REMARKS

Favorable reconsideration of this application, in light of the preceding amendments and following remarks, is respectfully requested.

Claims 1 and 5-25 are pending in this application. By this Amendment claims 16-18 are amended and no claims have been cancelled. No new matter is added. Claims 1 and 25 are the independent claims.

Applicants note with appreciation the Examiner's acknowledgement that certified copies of all priority documents have been received by the U.S.P.T.O.

DRAWINGS

Applicants respectfully note that the present action does not indicate that the drawings have been accepted by the Examiner. Applicants respectfully request that the **Examiner's next communication include an indication as to the acceptability of the filed drawings** or as to any perceived deficiencies so that the Applicants may have a full and fair opportunity to submit appropriate amendments and/or corrections to the drawings.

Allowable Subject Matter

Applicants note with appreciation that the Examiner has deemed claims 1, 5-15, and 20-25 are allowed.

Claim Amendments

The amendments to claims 16-18 are not for any reasons related to an art rejection.

Rejections under 35 U.S.C. § 112

Claims 16-17 and 19 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. Applicants respectfully traverse this rejection for the reasons detailed below.

As noted by the Examiner, 35 USC § 112 recites the following:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to **enable any person skilled in the art to which it pertains**, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.
(emphasis added)

Applicants would like to remind the Examiner, that **35 USC § 112 does not require that identical language from the claims be found in the specification**, only that the language of the claims be **enabled** by the specification.

Regarding claim 16, Applicants previously argued in the December 13, 2007 amendment that Para. [0020] of Applicants' disclosure states that "control signals" correspond to the "control program 7" and that the "control program 7 is stored in a storage medium 8." The Examiner argues that "a storage medium in which **[control] signals** are stored," is "clearly different" than "a storage medium in which a **control program** is stored," where the **control program corresponds to control signals**. Once again, Applicants would like to remind the Examiner that the standard under 35 USC §112, first paragraph, is not whether language of the specification is "**different**" than the claim, but whether the specification **enables** the claim. Clearly, as control signals are disclosed to correspond to the control program, **control signals and control program may be used interchangeably while still enabling a "person skilled in the art" under 35 U.S.C. § 112, first paragraph to practice the claimed invention.**

Nonetheless, Applicants have clarified claim 16 to recite a “computer program” instead of “control signals” and to recite a “computer-readable medium” instead of a “storage medium.” Additional example support for a “computer-readable medium” and a “computer program” is provided at Para. [0054] of Applicants’ application. Thus, claim 16 clearly complies with the written description requirement of 35 U.S.C. § 112, first paragraph.

Regarding claim 17, the Examiner alleges that there is no support in Applicants’ application for a “computer program product.” However, Fig. 1 and Para. [0020] of Applicants’ application plainly shows that a “computer program 7 is stored in a storage medium 8,” where the “storage medium 8” is included in a “computer 1.” That is, Applicants’ application shows a computer program stored in a computer. As such, a “computer program product” is definitely disclosed in Applicants’ application, noting once again that the exact language “computer program product” need not be cited in the Applicants’ application. Thus, claim 17 clearly complies with the written description requirement of 35 U.S.C. § 112, first paragraph.

Regarding claim 19, the Examiner rejects claim 19 for not providing support of “how a computer is programmed to perform the claimed step.” However, claim 19 is not a method claim but instead a device claim. That is, claim 19 claims “[a] computer which is programmed to carry out a selection method as claimed in claim 1.” Thus, Applicants’ must merely disclose a computer that is programmed. For example, as shown in Fig. 1 and disclosed at Para. [0018] of Applicants’ application, a “computer 1” is programmed to carry out the method of claim 1. Thus, claim 19 clearly complies with the written description requirement of 35 U.S.C. § 112, first paragraph.

In view of the above example support provided in Applicants’ application, claims 16-17 and 19 clearly comply with the written description requirement of 35 U.S.C. § 112, first paragraph. As such, Applicants respectfully submit that the above disclosures would enable a

person having ordinary skill to practice the claimed invention. Applicants, therefore, respectfully request that the rejection to claims 16-19 be withdrawn.

Rejections under 35 U.S.C. § 101

Claims 16-19 stand rejected under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter. Applicants respectfully traverse this rejection for the reasons detailed below.

Claim 16 has been amended to recite “**computer-readable medium encoded with a computer program.**” In further support, MPEP § 2106.01 states that a “**computer-readable medium encoded with a computer program** is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus **statutory**.” Thus, claim 16 is clearly statutory under 35 USC § 101.

Regarding claim 17, as noted above, Applicants’ application clearly provides support for a “computer program product.” Therefore, claim 17 is not a “computer program” per se. Moreover, claim 17 also recites “computer readable medium storing program code,” and therefore is also statutory for reasons cited above with respect to claim 16. Thus, claim 17 is clearly statutory under 35 USC § 101.

Claim 18 has been amended according to the Examiner’s comments. Regarding claim 19, the Examiner rejects claim 19 as “just a software implemented system.” However, claim 19 is not directed towards software but instead **hardware**. That is, claim 19 claims “[a] **computer** which is programmed to carry out a selection method as claimed in claim 1.” Thus, claim 19 is clearly a **device** claim, reciting structure, i.e., the “computer,” and thus plainly falls under the category of “machine” under 35 USC § 101.

Applicants, therefore, respectfully request that the rejection to the above claims under 35 U.S.C. § 101 be withdrawn.

CONCLUSION

In view of the above remarks and amendments, the Applicants respectfully submit that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.


Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Donald J. Daley, at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKY, & PIERCE, P.L.C.

By


Donald J. Daley, Reg. No. 34,313
P.O. Box 8910
Reston, Virginia 20195
(703) 668-8000

DJD/NKP:aem

